



~~the member after all required contributions, including interest, have been paid.~~

(3) In order to receive full membership service and service credit, employee and employer contributions must be paid by the employer on the gross compensation the member would have received, including any interim earnings. Proportional service credit will be granted if employee and employer contributions are paid on a lesser amount of compensation. Any statutorily-required state contributions must also be received.

(4) Lump-sum awards not considered compensation under state and federal tax laws will not be considered compensation for the purposes of this rule.

AUTH: 19-2-403, ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~, MCA

IMP: Title 19, Ch. 3, part 3, Ch. 5, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4 19-2-303(47), MCA

STATEMENT OF REASONABLE NECESSITY: Current language in (1) is not clear regarding whether a member must be reinstated to employment in order to purchase the lost time. The board has determined that a member must actually return to employment in order to purchase the lost time as service credit. Otherwise, a member who merely receives damages for his or her termination but who does not return to work would be purchasing time for which no work could be considered to have been performed. The proposed changes clarify the requirement that the member must return to work.

Arbitration is proposed to be added to the list of possible proceedings as most collective bargaining agreements require termination matters to be arbitrated. The board proposes to repeal the language requiring that it be a party to the proceeding as the board is not and should not be a party to a termination proceeding unless the terminated person was a board employee. The purpose of the language is to ensure the board knows of and can administer the terms of the reinstatement and related service purchase. The purpose is being met by board staff reaching out to the employer and labor communities regarding the board's role in these decisions and by the requirement that the member petition the board in order to purchase the service.

Section (2) is needed to establish the process to be followed by members who retire between being terminated and being returned to employment. This is a unique circumstance that is not covered by (1) but which is occurring more frequently as our members age.

If (1) is amended as proposed, the generic language in current (2) will no longer be needed. The amount of contributions and service will be based on the member's actual service. The board proposes that current (2) be repealed and replaced with (3). Section (3) establishes the process to be followed to ensure contributions related to the restored service are picked up by the employer.

Contributions related to membership service and service credit must be "picked-up"

for IRS qualification purposes.

Section (4) provides further clarification that not all termination awards will be considered compensation for retirement system purposes.

This rule is proposed to be transferred as the Public Employees' Retirement Board is completely reorganizing and restructuring its rules. The proposed restructure will better align with the statutes administered by the board and with the services provided by the board. Transfer of this rule, together with the restructuring of all board-administered rules, will enable the Montana Public Employees' Retirement Administration employees, covered employers, and retirement system members to more easily locate rules applicable to their needs and situation.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Roxanne M. Minnehan, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; fax (406) 444-5428; or e-mail [rminnehan@mt.gov](mailto:rminnehan@mt.gov), and must be received no later than 5:00 p.m., October 17, 2008.

5. Angela Salvitti, Paralegal for the MPERA, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Melanie Symons  
Melanie Symons, Legal Counsel and  
Rule Reviewer

/s/ Jay Klawon  
Jay Klawon, President  
Public Employees' Retirement Board

/s/ Michael P. Manion  
Michael P. Manion, Chief Legal Counsel and  
Rule Reviewer

Certified to the Secretary of State September 2, 2008.